

United States

Circuit Court of Appeals

For the Ninth Circuit. 22

ALFRED E. ROGERS, L. L. ROGERS, LUCY H.
ROGERS, et al.,

Appellants,

vs.

CONSOLIDATED ROCK PRODUCTS CO., F. B.
BADGLEY, R. E. FRITH,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Southern District of California,
Central Division.

FILED

AUG 23 1939

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States for the
 Southern District of California, Central Division

No. 25816-H

Bankruptcy

In the Matter of
 CONSOLIDATED ROCK PRODUCTS CO.,
 a Delaware corporation,

Debtor,

*Page numbering appearing at the foot of page of original certified Transcript of Record.

UNION ROCK COMPANY, a corporation,
Subsidiary,
and

CONSUMERS ROCK & GRAVEL COMPANY,
INC., a corporation,
Subsidiary.

CITATION

United States of America—ss.

To Consolidated Rock Products Co., F. B. Badgley, R. E. Frith, T. Fenton Knight, and Walter S. Taylor, composing Union Rock Company Bondholders' Protective Committee; Wm. D. Courtwright, Fred L. Dreher, F. J. Gay, Alfred Ginoux and Guy Witter, composing Consumers Rock and Gravel Company, Inc., Bondholders' Protective Committee; Edward E. Hatch and Louis Van Gelder, composing Preferred Stockholders' Committee of Consolidated Rock Products Co., E. Blois DuBois

Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 19th day of July, A. D. 1939, pursuant to an order allowing appeal filed on June 20, 1939, in the Clerk's Office of the District Court of the United States,

in and for the Southern District of California, in that certain cause No. 25816-H, Central Division, wherein Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, Howard M. Rogers, Rogers Corporation, Ltd., and Carlton Properties, Inc., Ltd., owners and holders of shares of common stock of Consolidated Rock Products Co., and George A. Rogers, Inc. Ltd., owner and holder of bonds of Union Rock Company, are appellants and you are appellees to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Harry A. Hollzer, United States District Judge for the Southern District of California, this 20th day of June, A. D. 1939, and of the Independence of the United States, the one hundred and sixty-third.

H. A. HOLLZER,

U. S. District Judge for the Southern District of California.

Service of a copy of the foregoing Citation acknowledged this 23rd day of June, 1939.

LATHAM & WATKINS,

By D. C. WORLEY,

Attorney Consolidated
Rock Products Co.

Received copy of the within document Jun 23,
1939.

GIBSON, DUNN & CRUTCHER,
Per A [1-A]

Received copy of the within document June 23,
1939.

O'MELVENY, TULLER &
MYERS,

By L. A. C.

STANLEY M. ARNDT,
Attorney for [Illegible]
MOTT & GRANT,

Attys. for E. Blois DuBois.

[Endorsed]: Filed Jul. 18, 1939.

In the District Court of the United States, South-
ern District of California, Central Division.

No. 25816-H

IN PROCEEDINGS FOR THE
REORGANIZATION OF A CORPORATION.

In the Matter of

CONSOLIDATED ROCK PRODUCTS CO.,
a Delaware corporation,

Debtor.

UNION ROCK COMPANY, a corporation,
Subsidiary,

and

CONSUMERS ROCK & GRAVEL COMPANY,
INC., a corporation,

Subsidiary.

ALFRED E. ROGERS, L. L. ROGERS, LUCY
H. ROGERS, HORACE V. GOODRICH,
HENRY C. CHASE, JACK B. ROGERS,
CARLTON M. ROGERS, HOWARD M.
ROGERS, ROGERS CORPORATION, LTD.,
and CARLTON PROPERTIES, INC. LTD.,
owners and holders of shares of common stock
of CONSOLIDATED ROCK PRODUCTS
CO., and GEORGE A. ROGERS, INC. LTD.,
owner and holder of bonds of UNION ROCK
COMPANY,

Appellants,

vs.

CONSOLIDATED ROCK PRODUCTS CO.,
F. B. BADGLEY, R. E. FRITH, T. FENTON
KNIGHT and WALTER S. TAYLOR, com-
posing UNION ROCK COMPANY BOND-
HOLDERS' PROTECTIVE COMMITTEE;
WM. D. COURTWRIGHT, FRED L.
DREHER, F. J. GAY, ALFRED GINOUX
and GUY WITTER, composing CONSUM-
ERS ROCK AND GRAVEL COMPANY,

INC., BONDHOLDERS' PROTECTIVE COMMITTEE; EDWARD E. HATCH and LOUIS VAN GELDER, composing PREFERRED STOCKHOLDERS' COMMITTEE OF CONSOLIDATED ROCK PRODUCTS CO. and E. BLOIS DUBOIS,

Appellees.

AGREED STATEMENT OF CASE AND
RECORD UPON APPEAL

It Is Hereby Stipulated by and between (a) Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, Howard N. Rogers, Rogers Corpora- [1-B] tion, Ltd., Carlton Properties, Inc. Ltd., and George A. Rogers, Inc. Ltd., appellants herein; (b) F. B. Badgley, R. E. Frith, T. Fenton Knight, and Walter S. Taylor, comprising the Union Rock Company Bondholders' Protective Committee; (c) William D. Courtwright, Fred L. Dreher, F. J. Gay, Alfred Ginoux and Guy Witter, comprising the Consumers Rock and Gravel Company, Inc. Bondholders' Protective Committee; (d) Edward E. Hatch, and Louis Van Gelder, comprising the Consolidated Rock Products Co. Preferred Stockholders' Committee; (e) Consolidated Rock Products Co., the debtor herein; and (f) E. Blois DuBois, through their respective attorneys of record, that the following shall constitute an agreed statement of the case:

1. On May 24, 1935, Consolidated Rock Products Co., and its wholly owned subsidiaries, Union Rock Company and Consumers Rock and Gravel Company, Inc., filed in the District Court of the United States, Southern District of California, Central Division, their respective petitions for relief under Section 77B of the Bankruptcy Act of 1898, as amended, and as then in effect. The petitions were duly and regularly filed and contained allegations necessary and proper to confer jurisdiction upon the Court. On the same date the Court entered its orders approving said petitions as properly filed under said Section 77B, directing that Consolidated be permitted to remain in possession of its properties and those of its said subsidiaries, and fixing the time and place of hearing, and prescribing the notice to be given, upon the questions as to whether debtor's possession of said property should be continued or a trustee appointed. On July 2, 1935, after hearing held on June 24, 1935, the Court entered its order continuing debtor in possession of said properties.

2. On April 28, 1937, the Debtor, the Union Rock Company Bondholders' Protective Committee and the Consumers Rock & Gravel Company, Inc., Bondholders' Protective Committee filed their petition [2] with the Court submitting a plan of reorganization, dated March 15, 1937. Written objections to said plan were filed by E. Blois DuBois, an owner and holder of both Union and Consumers

bonds, on August 25, 1937. Supplemental objections were filed by him on October 21, 1937. No objections to the plan were filed by appellants herein. After a hearing on November 1, 1937, the Court entered an order on November 3, 1937, referring said plan of reorganization and the objections thereto (except objections going to constitutionality) to Frank P. Doherty, special master. Hearing before the master commenced November 8, 1937, and was concluded November 17, 1937. The Findings and Report of the master were filed February 14, 1938.

3. Written exceptions to the Findings and Report of the master were filed by E. Blois DuBois on March 4, 1938, and written supplemental exceptions on March 5, 1938. No exceptions were filed by appellants. Hearing on exceptions taken to the Findings and Report of the master, and on constitutional questions presented by objectors to the plan, was had before the Court on March 7, 1938, and all matters were taken under submission by the Court. Thereafter, on September 8, 1938, the Court entered its Findings and Order confirming the Plan of Reorganization and the Findings and Report of the master.

4. Said Plan of Reorganization provides in part as follows:

All of the properties will be transferred to a new corporation, free and clear of all present claims of

bondholders and stockholders. The capitalization of the new company will consist of bonds, preferred stock and common stock. The new bonds will be secured by a blanket mortgage on all of the properties of the new company. Each present \$1,000 bondholder will receive in exchange for his present bond: \$500 principal amount of new bonds and \$500 [3] par value of new preferred stock. Each present preferred stockholder will receive for each present preferred share one share of new common stock. Each present common stockholder will receive for each five shares of present common stock a warrant entitling the holder to purchase one share of new common stock at \$1.00, at any time within 3 months after its date. In addition to the new bonds and new preferred stock, the present bondholders will receive warrants, entitling them over a period of five years to purchase common stock of the new company.

The new bonds are to be divided into two series designated "Series U" (to go to Union Rock Company bondholders) and "Series C" (to go to Consumers Rock & Gravel Company, Inc. bondholders). "Series U" bonds will total \$938,500.00 and "Series C" will total \$568,500.00. The income from the combined properties applicable to the servicing of the new bonds is to be divided into two equal parts, one of which will be applied to the servicing of the C Series of new bonds and the other to the U Series of new bonds. There is no distinction between the

two series as to priority of their lien. The new preferred stock is likewise divided into "Series U" and "Series C". There is no distinction as to priority between the series of new preferred stock, there is a similar provision for the allocation of income to their servicing.

A voting trust is set up in which there is to be placed all the preferred stock of both Classes U and C, except that any bondholder who does not wish his preferred stock to be held in the voting trust will be entitled to receive his stock free of such trust, provided he gives written notice of such intention within thirty days after the confirmation of the plan.

5. On August 26, 1938, prior to entry of the order of confirmation, Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, [4] Howard N. Rogers, Rogers Corporation, Ltd., Carlton Properties, Inc. Ltd., and George A. Rogers, Inc. Ltd., appellants herein, filed in the District Court a "Proposal for Changes and Modifications" in said Plan of Reorganization. Said proposal provided in substance (1) for more favorable terms in the stock purchase warrants to be issued old common stockholders, substituting a schedule of lower purchase prices and longer periods of time within which to exercise said rights, and (2) for elimination of the provisions for allocating income between the two series of new bonds,

so that all the net income of the new corporation should be applied to the bonds without discrimination between the same.

6. Thereafter counsel for the Debtor, the Union Rock Company Bondholders' Protective Committee and the Consumers Rock & Gravel Company, Inc. Bondholders' Protective Committee, the proponents of the plan of reorganization, requested that said proposals for modifications be withdrawn temporarily because they felt that said proposals interfered with the entry of the formal order of confirmation. Pursuant to such request, on September 7, 1938, a stipulation was signed by all the parties hereto reading as follows:

“It Is Stipulated That an order be made herein authorizing the withdrawal of said Proposal for Changes and Modifications in Plan of Reorganization, without prejudice to a renewal thereof after the Order for Confirmation shall have been signed, and that after such Order for Confirmation shall have been signed herein, such proposal may be renewed.”

Pursuant to said stipulation, an order was made by Harry A. Hollzer, United States District Judge, on September 8, 1938, in the following terms: .

“It Is Ordered that said Proposal be withdrawn, without prejudice to renew the same after an order has been made herein confirming the plan of reorganization, and that after an

order [5] has been made herein confirming the plan of reorganization as proposed, said proponents shall be and are hereby authorized to renew their said proposal."

Said plan of reorganization was thereafter confirmed, by a formal order of said Court, signed and entered in said Court on September 8, 1939.

7. Appellants Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, Howard N. Rogers, Rogers Corporation, Ltd., Carlton Properties, Inc. Ltd. and George A. Rogers, Inc. Ltd., then filed for the second time, their

PROPOSAL FOR CHANGES AND MODIFICATIONS IN THE PLAN OF REORGANIZATION,

on September 17, 1938. In terms said proposal was identical with the proposal submitted by them on August 26, 1938, except that it added provisions for elimination of the voting trust, and read as follows:

"Come now Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, Howard N. Rogers, Rogers Corporation, Ltd., and Carlton Properties, Inc. Ltd., all of whom are owners and holders of shares of common stock of Consolidated Rock Products Co., and George A. Rogers, Inc., Ltd., an owner and

holder of bonds of Union Rock Company, and pursuant to the provisions of Subd. (f) of Sec. 77B of the Bankruptcy Act, propose the following changes and modifications in the plan of reorganization heretofore adopted.

I.

Change and amend that portion of Article IV of said plan, headed "Treatment of Existing Security Holders and Creditors" reading:

"For each five shares of present common stock; a stock purchase warrant entitling the holders thereof, at any [6] time within three months after its date, to purchase one share of new common stock at the price of \$1.00".

and substitute, as an amendment and change thereof, the following:

"For each three shares of present common stock a stock purchase warrant shall be issued to the holders of said common stock, which said warrant shall entitle the holder thereof to purchase one share of new common stock at any time before the expiration of two years after the date of issuance of said warrant at the following prices:

1. If exercised during the first three months, at \$.25 per share;
2. If exercised during the second three months, at \$.50 per share;

3. If exercised during the next six months, at \$1.00 per share;
4. If exercised during the first six months of the second year, at \$1.50 per share;
5. If exercised during the second six months of the second year, at \$2.50 per share."

and that Subdivision 3 of Article III of said Plan shall be so amended as that the total number of shares of common stock and the total shares reserved for issuance upon purchase of stock purchase warrants to be issued to the present holders of common stock of the Debtor shall be increased to conform said proposed amendment to Article IV of said Plan.

Said proposals for a change and modification of the plan heretofore approved are made upon the following grounds and should be adopted for the following reasons:

1. Since the proposal of the plan heretofore adopted there has been a marked improvement in the financial and business condition of the Debtor corporations as shown by earning statements on file herein. [7]

2. The aforesaid marked improvement in earnings of the Debtor corporations has resulted in a much greater amount of cash on hand than was anticipated or contemplated at the time said plan of reorganization was proposed.

3. The amount of cash which would be paid into the reorganized Debtor corporations if the holders of common stock were to exercise the option now offered to them at the price stated in the approved plan of reorganization is much greater than is necessary for the immediate needs of the reorganized Debtor.

4. The common stockholders still have an equity in the assets of the Debtor Consolidated Rock Products Co. and it is unfair, unjust and inequitable to require their payment of the large sums provided in the approved plan.

5. The time permitted for the common stockholders to exercise the present option is too short to permit the said common stockholders a fair or proper chance to salvage any portion of their investment in the Debtor Consolidated Rock Products Co.

6. No prejudice will result to any creditor or preferred stockholder of the Debtor Consolidated Rock Products Co. by reason of the proposed change and amendment and great advantage will result to the common stockholders.

7. The proposed changes and amendments are just, fair and equitable.

II.

Change and amend Article V of said plan, headed "Allocation of Net Income" so as to

eliminate therefrom all provisions for dividing the net income of the new corporation into two equal parts and applying one part thereof to the proposed Series U Bonds (Amounting to \$938,500.00) and the other part thereof to the proposed Series C Bonds (Amounting to \$568,500.00) [8] so that said Article V, as amended, shall provide, in substance, that all of the net income of the new corporation shall be applied first to the payment of interest on both Series U and Series C Bonds without distinction or discrimination between the same. Change and amend Article VI of said plan, headed "Provisions of New Bonds and of New Trust Indentures" to conform with Article V, as amended.

Said proposals for a change and modification of the plan heretofore approved are made upon the following grounds and should be adopted for the following reasons:

1. There is no reason to prefer the bondholders of Consumers Rock & Gravel Company, Inc. over the bondholders of Union Rock Company and the preference provided for in said Paragraph V of said plan is unfair, unjust and inequitable.

2. That the present value of the property now securing the bonds of the Union Rock Company is greatly in excess of the present value of the properties securing the bonds

issued by the Consumers Rock & Gravel Company, and bond for bond the present value of the properties securing the bonds issued by the Union Rock Company is greatly in excess of the present value of the property securing the outstanding bonds issued by the Consumers Rock & Gravel Company, and that the general character of the rock in the properties securing the bonds of the Union Rock Company is of a much higher grade than the general character of the rock in the properties securing the bonds of the Consumers Rock & Gravel Company.

3. The proposed changes and amendments are just, fair and equitable.

III.

Modify Article IX of said plan by eliminating the whole thereof, and in lieu thereof provide as follows:

“The new preferred stock, Series U, to be issued for the holders of Union bonds, and the new preferred [9] stock, Series C, to be issued for the holders of Consumers bonds, will be issued directly to the owners thereof.”

Said proposal for a change and modification of the plan heretofore approved is made upon the following grounds and should be adopted for the following reasons:

1. The proposed change is just, fair and equitable, whereas the present Article IX of said plan contemplates an illegal combination of stockholders.

The proponents of the foregoing proposed changes and modifications in the plan of reorganization heretofore adopted have not consented to nor accepted said plan. The amounts of the holdings of each of the stockholders above named are:

| | |
|-----------------------------------|--------|
| Alfred E. Rogers..... | 1,500 |
| L. L. Rogers..... | 6,000 |
| Lucy H. Rogers..... | 5,500 |
| Rogers Corporation, Ltd..... | 30,000 |
| Carlton Properties, Inc. Ltd..... | 6,000 |
| Horace V. Goodrich..... | 200 |
| Henry C. Chase..... | 1,100 |
| Jack B. Rogers..... | 600 |
| Carlton M. Rogers..... | 500 |
| Howard N. Rogers..... | 500 |

The amount of bonds of Union Rock Company held by George A. Rogers, Inc., Ltd., the bondholder above named, is 50, having an aggregate principal amount of \$50,000.00. Rogers Corporation, Ltd. Carlton Properties, Inc. Ltd., and George A. Rogers, Inc., Ltd. are each and all corporations duly organized under and existing by virtue of the laws of the State of California.

Wherefore, the proponents pray that the aforesaid proposed changes and modifications in the plan of reorganization of the Debtor corporations be adopted and approved and that the [10] plan of reorganization of the Debtors, as so changed and modified, be confirmed."

8. Thereafter E. Blois DuBois, an objecting bondholder, perfected an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the order and decree of the District Court confirming said plan of reorganization. Said appeal was allowed by said District Court on October 4, 1938, and by the United States Circuit Court of Appeals on October 24, 1938.

9. Thereafter a stipulation was signed by all of the parties hereto providing that the proposal of Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, Howard N. Rogers, Rogers Corporation, Ltd., Carlton Properties, Inc. Ltd. and George A. Rogers, Inc. Ltd., for changes and modifications in said plan of reorganization, should come on for hearing in the District Court on Monday the 22nd day of May, 1939, at the hour of 10 o'clock A. M., without further notice.

10. On May 15, 1939, there was served and filed a

NOTICE OF MOTION

of the Committee of Preferred Stockholders of Consolidated Rock Products Co. "to dismiss pro-

posal for changes and modifications in plan of reorganization and of opposition to consideration thereof." Said notice read as follows:

"To Alfred E. Rogers, et al., and Lucius K. Chase and Chase, Barnes & Chase, Their Attorneys:

Take Notice that on Monday, the 22nd day of May, 1939, at the hour of 10 o'clock a. m., or as soon thereafter as counsel can be heard, the undersigned, on behalf of the Committee of Preferred Stockholders of Consolidated Rock Products Co., will move the above entitled court, in the courtroom of the Hon. Harry A. Hollzer, United States [11] District Judge, Second Floor of the United States Post Office and Court House, Los Angeles, California, to dismiss the "Proposal for Changes and Modifications in Plan of Reorganization" filed by Alfred E. Rogers, et al.

Said motion will be based upon the ground that the Court has no jurisdiction in the matter in that the plan of reorganization which it is proposed to change or modify is now on appeal, the term in which said plan of reorganization was approved has expired, the appeal has been perfected, briefs have been filed by the parties herein, and the above entitled Court has no jurisdiction in the matter.

Take Further Notice that at said time and place, the undersigned will likewise object to

the consideration of said "Proposal for Changes and Modifications in Plan of Reorganization" for the same reason as above set forth.

Said motion will be based upon this notice, upon the records, files and proceedings hereof, and upon evidence to be adduced at said hearing."

11. On May 22, 1939, said motion to dismiss and said proposal for modification were on the calendar for hearing in said District Court before the Honorable Harry A. Hollzer, Judge thereof, and the following proceedings were had:

On behalf of the preferred stockholders of Consolidated Rock Products Co., Stanley Arndt, Esq., moved to dismiss the Proposal for Changes and Modifications in the Plan of Reorganization of Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, Howard N. Rogers, Rogers Corporation, Ltd., Carlton Properties, Inc. Ltd. and George A. Rogers, Inc. Ltd., appellants herein, and objected to any consideration thereof, upon the grounds set forth in the notice of motion theretofore served and filed, and argued in support of said [12] motion.

It was stipulated that the appeal of E. Blois DuBois from the order confirming the plan of reorganization had been perfected and was then pending

before the Circuit Court of Appeals, and that briefs had been filed.

Counsel for Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, Howard N. Rogers, Rogers Corporation, Ltd., Carlton Properties, Inc. Ltd. and George A. Rogers, Inc. Ltd., proceeded to argue in opposition to the motion to dismiss stating, among other things, as follows:

“The appeal filed by Mr. Grant came on so soon after we had filed this petition that we took no steps to bring the matter on for hearing. We felt that because that appeal concerned points which we had raised in our modifications, it would not be proper to bring the matter on before the court during the pendency of the appeal and cause the court to pass upon certain matters which the Circuit Court of Appeals had before it, because, just as Mr. Arndt has pointed out, it is a source of confusion if two courts are passing upon the same matters at the same time. Frankly, we had not considered the question of jurisdiction at that time. We had felt that it was more of a matter of, perhaps you might say, good manners, that the petition would not be brought on, because, to hear the matter and have an extended hearing would result in the court, perhaps, doing an idle act in that the Circuit Court of Appeals might take a different position than was taken

by the master and the trial court, and might reverse the decree, might even propose modifications on its own behalf that might add things which would negative and render nugatory everything which we have done here. So, because of that, we did not insist that the matter be brought on.

Then, Mr. Watkins, as he has stated, became insistent that [13] the matter be heard, and because we wished to be agreeable, we prepared a stipulation and sent it around to all the counsel, which brings the matter on for hearing today.”

* * * * *

“We are ready to proceed with the modifications if the court wishes to hear them now. We do not wish to waste the court’s time. If the court feels that the jurisdiction has been suspended, then we will gladly yield to that decision of the court and bring our proposed modifications on just as rapidly as possible after the appeal has been decided.

But as far as the motion to dismiss is concerned, it certainly should be denied because the court’s jurisdiction is merely suspended and not rendered totally void.

The Court: May I inquire as to what your position is with reference to this question, and it may have some bearing on how we should view the present motion: Assume a somewhat

different state of facts than has been thus far suggested, namely, assume that the court of appeals should affirm the order approving the plan of reorganization; is it your contention that we may then proceed to consider the motion that you have filed?

Counsel: Exactly, your Honor. The judgment of the Circuit Court or the Supreme Court, if the case goes that far, affirming the proposed plan of reorganization, is merely a judgment that the interlocutory decree is fair and reaches an equitable result among all the parties. If the trial court then thereafter, in the exercise of its discretion, upon proposed modifications, deems that certain factors in the decree are not equitable, do not do equity among the parties, then it has jurisdiction and the right and, indeed, the duty, to modify that plan. And it is our position that, no matter what the Circuit Court of Appeals does, this Court, [14] upon its jurisdiction being restored, may proceed to modify the plan or refuse to modify it. It is a matter of discretion, entirely discretionary.

The Court: Getting closer, then, to the problem that immediately concerns us, aren't you satisfied that, at least pending the determination of this appeal that has been taken, the court lacks authority to entertain your motion?

Counsel: We are so satisfied, your Honor. We believe it should be placed off calendar."

Counsel for appellants further stated:

“One of the points which is involved in our petition and one of the points which is being argued at great length in the brief is the question of division of income between the two groups of bondholders. That is one point on which we intend to offer a great deal of evidence; and that is the very point that the Circuit Court of Appeals is going to decide. If they decide that point one way or the other, and particularly if they decide it in our favor, we are certainly not going to bring any modification on. We believe that, as to that extent, we would be bound by the Circuit Court of Appeals, and certainly we are willing to be bound by its decision on that point.”

At no time was said petition or proposal for modification heard and the merits of said petition were not inquired into.

The court then announced that an order would be entered granting the motion to dismiss and recommended to petitioners (appellants herein) that they proceed forthwith to get a ruling by the Circuit Court of Appeals on the question as to whether if at any time the District Court might consider the petition to modify, other than in accordance with some decision which the [15] Circuit Court of Appeals might make on the DuBois appeal then pend-

ing before it and directed the preparation of a formal order. On said date an entry was made in the minutes of said court, as follows:

No. 25816-H Bkey.

“In the Matter of

Consolidated Rock Products Co.,

Debtor.

This matter coming on for (1) hearing petition of Alfred E. Rogers, et al., for modification of Plan of Reorganization, pursuant to stipulation filed May 8, 1939; (2) hearing on motion of Committee of Preferred Stockholders of the Debtor to discuss “proposal for changes and modifications in Plan of Reorganization” filed by Alfred E. Rogers, et al.; and on objections of said Committee to consideration of said proposal, pursuant to notice filed May 16, 1939; Lucius K. Chase and T. R. Suttner, Esqs., appearing for Alfred E. Rogers, et al.; Stanley Arndt, Esq., appearing for the Preferred Stockholders Committee; James M. Irvine, Jr., Esq., appearing for the Union Rock Company Bondholders’ Protective Committee; J. C. Macfarland, Esq., appearing for the Consumers’ Rock & Gravel Co. Bondholders’ Protective Committee; Paul R. Watkins, Esq., appearing for the Debtor; Kenneth E. Grant, Esq., appearing for Blois DuBois; and A. H.

Bargion being present as Court Reporter and reporting the testimony and proceedings:

It is ordered that a reporter attend and that his fees be advanced by the Debtor estate at this time, and the Court reserves jurisdiction to determine if cost of reporter should be charged as costs.

Attorney Arndt argues in support of motion to dismiss "proposal for changes and modification in Plan of Reorganization", etc.

Attorney Suttner argues in opposition to motion [16] to dismiss; Attorney Arndt argues further in support of motion to dismiss; and various counsel make statements; whereupon, It Is Ordered that motion to dismiss "proposal for changes and modifications in Plan of Reorganization" filed by Alfred E. Rogers, et al., be granted. Counsel to prepare order. Exception noted to the petitioner."

Thereafter a formal order of dismissal was prepared, signed by said District Court and entered therein on June 5, 1939, as follows:

“In the District Court of the United States,
Southern District of California, Central
Division.

In Proceedings for the Reorganization of a
Corporation—No. 25816-H

In the Matter of

CONSOLIDATED ROCK PRODUCTS

CO., a Delaware corporation,

Debtor.

ORDER GRANTING MOTION TO DIS-
MISS PROPOSAL OF ROGERS, ET
AL., AND DISMISSING SAID PRO-
POSAL.

The motion of the Committee of Preferred Stockholders of Consolidated Rock Products Co. to dismiss “Proposal for Changes and Modifications in Plan of Reorganization”, filed by Alfred E. Rogers, et al., came on regularly to be heard pursuant to stipulation of all counsel on Monday, the 22nd day of May, 1939, before the above entitled Court, Hon. Harry A. Hollzer, judge presiding. Said Committee of Preferred Stockholders of Consolidated Rock Products Co. appeared by Stanley N. Arndt, their counsel; Alfred E. Rogers, et al., appeared by Lucius K. Chase, and Chase, Barnes & Chase, their attorneys; E. Blois DuBois appeared by Mott & Grant, by K. E. Grant, his

attorneys; Union Rock Company Bondholders' Protective Committee appeared by O'Melveny, Tuller & Myers, by James M. Irvine, their attorney; [17] neys; the Consumers Rock & Gravel Company, Inc., Bondholders' Protective Committee appeared by Gibson, Dunn & Crutcher, by J. C. MacFarland, their attorneys; and Consolidated Rock Products Co., the debtor herein, and its subsidiaries, Union Rock Company and Consumers Rock & Gravel Company, Inc., appeared by Latham & Watkins, by Paul H. Watkins, their attorneys.

It was stipulated by and between the parties, and the Court finds:

(a) That said proposal of Alfred E. Rogers, et al., was a petition for modification of a plan of reorganization, which plan of reorganization was confirmed herein by this Court by order dated September 8, 1938. Said proposal of Alfred E. Rogers, et al., was filed September 17, 1938, but was not brought on for hearing until May 22, 1939. No attempt was made to set said proposal for hearing until April, 1939.

(b) That an appeal to the Federal Circuit Court of Appeal for the 9th Circuit from said order confirming said plan of reorganization was perfected on behalf of E. Blois duBois as appellant on October 3, 1938; that the opening briefs, reply briefs and closing briefs have been filed in said appeal and that said appeal

is now ready to be heard and determined by the Circuit Court of Appeals for the Ninth Circuit.

Said motion was made upon said stipulated facts and upon the records, files and proceedings hereof.

The matter was duly argued by counsel for the various parties. During the argument it was stated by counsel for Alfred E. Rogers, et al., that the Court's jurisdiction to proceed at the present time was suspended during the pendency of the appeal and it was suggested by them that the said proposal of Alfred E. Rogers, et al., should not be dismissed by the Court but should go off calendar to be heard after the mandate of the Circuit Court of Appeals had been received. This sug- [18] gestion was opposed by the attorney for the Committee of Preferred Stockholders of Consolidated Rock Products Co. and by the attorneys for the Consumers Rock & Gravel Company, Inc., Bondholders' Protective Committee, Consolidated Rock Products Co., Union Rock Company, Consumers Rock & Gravel Company, Inc., and the Union Rock Company Bondholders' Protective Committee, who joined in the motion to dismiss and, together with the attorney for the Preferred Stockholders' Committee, contended that the Court not only had no jurisdiction to proceed at the present time but would have no jurisdiction to consider said

proposal hereafter except to comply with whatever mandate came down from the Circuit Court of Appeals.

After said argument, the matter was submitted to the Court for determination, and the Court being fully advised in the premises, makes its conclusions of law upon said stipulated and found facts as follows:

1. That this Court has no jurisdiction to consider said proposal for modification or any other proposal for modification of said plan of reorganization in that the order confirming the plan of reorganization which it is proposed to change and modify is now on appeal, which appeal has been perfected, and is ready for hearing and determination by the Circuit Court of Appeals for the 9th Circuit.

2. That the said "Proposal for Changes and Modifications in Plan of Reorganization" filed by Alfred E. Rogers, et al., should be dismissed for want of jurisdiction.

3. If the final order of the Circuit Court of Appeals is an order affirming said order appealed from, no jurisdiction will rest in this court to consider any proposal for changes or modification in said plan of reorganization. If the final [19] order of the Circuit Court of Appeals does not affirm said order, then this Court must proceed in accordance with the mandate of the Circuit Court when it becomes final.

Wherefore, It Is Ordered, Adjudged and Decreed that said motion of the Committee of Preferred Stockholders of Consolidated Rock Products Co. to dismiss the "Proposal for Changes and Modifications in Plan of Reorganization", filed by Alfred E. Rogers, et al., be and the same hereby is granted, and that said "Proposal for Changes and Modifications in Plan of Reorganization" be and the same hereby is dismissed.

An exception is hereby allowed to Alfred E. Rogers, et al.

Dated, June 3, 1939.

HARRY A. HOLLZER,
Judge of the United States
District Court."

On June 5, 1939, a notice was served on appellants by Stanley Arndt, Esq., as attorney for the Preferred Stockholders' Committee, stating that on June 5, 1939, the above order of dismissal had been entered in said court.

On June 20, 1939 appellants filed herein their notice of appeal from said order of dismissal as follows:

“[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS, FOR THE NINTH
CIRCUIT, UNDER RULE 73B. [20]

“Notice is Hereby Given that Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, Howard M. Rogers, Rogers Corporation, Ltd., and Carlton Properties, Inc., Ltd., common stockholders of Consolidated Rock Products Co., debtor above named, and George A. Rogers, Inc. Ltd., a bondholder of Union Rock Company, debtor above named, and proponents of changes and modifications in the plan of reorganization of the above named debtor corporations in this cause, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the minute order dated May 22, 1939, granting the motion of the Committee of Preferred Stockholders of Consolidated Rock Products Co., to dismiss the proposal for changes and modifications in the plan of reorganization filed by appellants, and from the order entitled “order granting motion to dismiss proposal of Rogers, et al and dismissing said proposal”, entered herein on the 5th day of June, 1939, and dated June 3, 1939.

Dated: June 20, 1939.

CHASE, BARNES & CHASE,
LUCIUS K. CHASE,
THOMAS R. SUTTNER,
Attorneys for Appellants.”

On June 20, 1939 appellants filed with the District Court their petition for allowance of an appeal from said order, in due form of law, together with their assignment of errors, which said

ASSIGNMENT OF ERRORS

reads as follows:

“Come now Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. Chase, Jack B. Rogers, Carlton M. Rogers, Howard M. Rogers, Rogers Corporation, Ltd., and Carlton Properties, Inc. Ltd., owners and holders of shares of common stock of Consolidated Rock Products Co., debtor above named, and George A. Rogers, Inc. Ltd. owner and holder of bonds of [21] Union Rock Company, debtor above named, proponents of changes and modifications in plan of reorganization of the above named debtor corporations heretofore filed and confirmed herein, and in support of their petition filed herewith praying leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, make the following assignment of errors, which they aver occurred at the hearing and determination of this

proceeding and in the rendering of the orders appealed from:

I.

The court erred in making and entering the minute entry of May 22, 1939, dismissing appellants' proposal for changes and modifications in the plan of reorganization of the debtors above named.

II.

The court erred in making and entering the order of June 5, 1939, dismissing appellants' proposal for changes and modifications in the plan of reorganization of the debtors above named;

III.

The court erred in making and entering the orders of May 22, 1939 and June 5, 1939, granting the motion of the Committee of Preferred Stockholders of Consolidated Rock Products Co. to dismiss appellants' proposal for changes and modifications in said plan of reorganization of the debtors above named;

IV.

The court erred in determining that it had no jurisdiction on May 22, 1939 to hear the proposal of appellants for changes and modifications in the plan of reorganization of the above named debtor corporations;

V.

The court erred in determining that appellants' proposal for changes and modifications in said plan of reorganization [22] should be dismissed for want of jurisdiction;

VI.

The court erred in determining that if the Circuit Court of Appeals should enter an order affirming the appeal of E. Blois DuBois from the decree confirming the plan of reorganization of the above named debtor corporations now pending before said court, no jurisdiction will thereafter rest in the District Court to consider any proposal for changes or modifications in said plan of reorganization;

VII.

The court erred in determining that if the final order of the Circuit Court of Appeals in said appeal of E. Blois DuBois from the decree confirming the plan of reorganization of the above named debtor corporations is not an affirmance of the decree appealed from by said appellant, then the District Court can proceed only in accordance with the mandate of the Circuit Court, when final, and cannot then consider a proposal for changes and modifications in the plan of reorganization of said debtor corporations.

VIII.

The court erred in not determining that the trial court's jurisdiction to pass upon appellants' proposal for modification of the plan of reorganization of the debtors above named was suspended as a matter of law during the pendency of the appeal of E. Blois DuBois from the decree confirming said plan of reorganization.

Wherefore, appellants pray that the decree of the District Court appealed from shall be reversed.

Dated: June 20, 1939." [23]

On June 20, 1939, said petition for allowance of appeal was granted and an order made thereon as follows:

"In the above entitled case (mentioned in the petition to which this order is attached) it is ordered that the appeal therein prayed for be, and the same is, hereby allowed and the court hereby fixes the amount of the cost bond to be given by the appellants, the parties named in said petition, in the sum of Two Hundred Fifty Dollars (\$250.00); and

It is further ordered that the cost bond in said amount, heretofore filed by petitioners, shall be deemed compliance with this order.

Dated: June 20, 1939.

HARRY A. HOLLZER,
United States District Judge"

Following is a

STATEMENT OF THE POINTS TO BE
RELIED ON BY APPELLANTS,

as required by Rule 76, Rules of Civil Procedure.

I.

The District Court Erred in Dismissing Appellants' Proposed Changes and Modifications in the Plan of Reorganization of the Debtor Corporations, on the Ground That It Had No Jurisdiction to Make Said Modifications, Because

(1) The power to make such modifications after the confirmation of the plan of reorganization is expressly conferred upon District Courts of the United States by statute, to-wit: Sec. 77B of the old Bankruptcy Act and Sec. 222 of Chap. X of the Chandler Act;

(2) Prior to the confirmation of the plan of reorganization the District Court had made and entered an order permitting appellants to withdraw the proposed Changes and Modifications then on file without prejudice to the renewal thereof after confirmation of the plan;

(3) The appeal of E. Blois DuBois, a dissenting bondholder, was not perfected until after appellants' proposal for modification had been filed in the District Court for the second time; [24]

(4) The effect of the appeal of E. Blois DuBois could at most only suspend the Dis-

trict Court's jurisdiction during the pendency of that appeal so that subsequent to the determination thereof the District Court will have full jurisdiction to hear and consider appellants' proposals for Changes and Modifications, on their merits;

(5) The mandate of the Circuit Court of Appeals in the DuBois case when issued cannot restrict the power and jurisdiction of the District Court to supervise, change and modify the Debtor's plan of reorganization and said jurisdiction of the District Court will continue until consummation of the Plan and entry of the Final Decree.

On June 20, 1939, appellants filed in the District Court a bond in the sum of \$250.00, with sufficient surety, conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or of such costs as the Appellate Court may award if the judgment is modified.

The foregoing agreed statement constitutes the record on this appeal for all purposes.

Dated: July 14, 1939.

CHASE, BARNES & CHASE,
LUCIUS K. CHASE, and
THOMAS R. SUTTNER,

By LUCIUS K. CHASE,

Attorneys for Alfred E. Rog-
ers, L. L. Rogers, Lucy H.
Rogers, Horace V. Goodrich,
Henry C. Chase, Jack B. Rog-
ers, Carlton M. Rogers, How-
ard M. Rogers, Rogers Corpo-
ration, Ltd., Carlton Prop-
erties, Inc. Ltd. and George
A. Rogers, Inc. Ltd.

MOTT AND GRANT,

JOHN G. MOTT,

KENNETH E. GRANT and

HOWARD A. GRANT,

By KENNETH E. GRANT,

Attorneys for E. Blois DuBois.

[25]

LATHAM & WATKINS, and

PAUL R. WATKINS,

By PAUL R. WATKINS,

Attorneys for Consolidated Rock
Products Co., Union Rock
Company and Consumers
Rock & Gravel Company, Inc.

STANLEY M. ARNDT,

Attorney for Edward E. Hatch
and Louis Van Gelder, Com-
posing the Consolidated Rock
Products Co. Preferred Stock-
holders' Committee.

O'MELVENY, TULLER &
MYERS,

HOMER I. MITCHELL, and
GRAHAM L. STERLING, JR.

By GRAHAM L. STERLING, JR.

Attorneys for F. B. Badgley,
R. E. Frith, T. Fenton Knight
and Walter S. Taylor, Com-
posing the Union Rock Com-
pany Bondholders' Protective
Committee.

GIBSON, DUNN &
CRUTCHER,

J. C. MACFARLAND,
THOMAS H. JOYCE, and
FREDERIC H. STURDY,

By THOMAS H. JOYCE,

Attorneys for Wm. D. Court-
wright, Fred L. Dreher, F. J.
Gay, Alfred Ginoux and Guy
Witter, Composing the Con-
sumers Rock and Gravel Com-
pany, Inc., Bondholders' Pro-
tective Committee.

CERTIFICATE OF COURT ON AGREED
STATEMENT OF FACTS

The undersigned, Harry A. Hollzer, Judge of the United States District Court for the Southern District of California, Central Division, hereby certifies that the foregoing agreed statement of the case conforms with the truth and fully and fairly presents all evidence taken and proceedings had before the Special Master and the Court which are essential to decision of the questions on appeal raised by the Assignment of Errors filed by appellants Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, Horace V. Goodrich, Henry C. [26] Chase, Jack B. Rogers, Carlton M. Rogers, Howard M. Rogers, Rogers Corporation, Ltd., and Carlton Properties, Inc. Ltd., and George A. Rogers, Inc. Ltd., and the points to be relied on by said appellants which are made a part of said statement.

Dated: July 17, 1939.

H. A. HOLLZER,

Judge.

[Endorsed]: Filed Jul. 18, 1939. [27]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages numbered from 1-a to 28, contain the Original Cita-

tion, a full, true and correct copy of the Names and Addresses of Attorneys; Agreed Statement of the Case, which constitute the Record on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$4.55, and that said amount has been paid me by the Appellant herein.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said Court this 19th day of July, A. D. 1939.

[Seal] R. S. ZIMMERMAN,

Clerk,

By: EDMUND L. SMITH,

Deputy Clerk.

[Endorsed]: No. 9214. United States Circuit Court of Appeals for the Ninth Circuit. Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers, et al., Appellants, vs. Consolidated Rock Products Co., F. B. Badgley, R. E. Frith, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed July 20, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 9214

In Proceedings for the Reorganization of a
Corporation.

In the Matter of

CONSOLIDATED ROCK PRODUCTS CO.,
a Delaware corporation,

Debtor,

UNION ROCK COMPANY,
a corporation,

Subsidiary,

and

CONSUMERS ROCK & GRAVEL COMPANY
INC., a corporation,

Subsidiary.

PETITION FOR LEAVE TO APPEAL TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS, FOR THE NINTH CIRCUIT.

To the Honorable Judges of the United States Cir-
cuit Court of Appeals, for the Ninth Circuit:

Alfred E. Rogers, L. L. Rogers, Lucy H. Rogers,
Horace V. Goodrich, Henry C. Chase, Jack B.
Rogers, Carlton M. Rogers, Howard M. Rogers,
Rogers Corporation, Ltd., and Carlton Properties,
Inc., Ltd., owners and holders of shares of common
stock of Consolidated Rock Products Co., debtor
above named, and George A. Rogers, Inc., Ltd.

owner and holder of bonds of Union Rock Company, debtor above named, proponents of changes and modifications in the plan of reorganization of the above named debtor corporations heretofore filed and confirmed herein, feeling themselves aggrieved by the order of the District Court of the United States for the Southern District of California, Central Division, entered herein on the 5th day of June, 1939, entitled "Order Granting Motion to Dismiss Proposal of Rogers, et al., and Dismissing Said Proposal", by the Honorable Harry A. Hollzer, Judge of said Court, whereby the proposal of petitioners for changes and modifications in the plan of reorganization of the above named debtor corporations was dismissed on the motion of the committee of preferred stockholders of Consolidated Rock Products Co. pursuant to a hearing had on said motion on May 22, 1939, hereby petition for leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from such order and the whole thereof, for the reasons set forth in petitioners' assignment of errors presented and filed with this petition, reference to which is hereby made.

Your petitioners present herewith typed copies of papers filed and orders entered in the District Court for consideration by this court in connection with this petition.

Your petitioners pray that appeal to the United States Circuit Court of Appeals for the Ninth Circuit may be allowed them, that the amount of cost

bond on appeal be fixed, and that a citation be issued directed to the debtor above named, the Committee of Preferred Stockholders of Consolidated Rock Products Co., Union Rock Company Bondholders Protective Committee, Consolidated Rock & Gravel Co., Inc., Bondholders Protective Committee and E. Blois DuBois, commanding them, and each of them, to appear before the said United States Circuit Court of Appeals for the Ninth Circuit, to do and receive that which may appertain to justice in the premises, and that a transcript of the record, proceedings and papers upon which said orders were made shall be duly made and authenticated and sent to the aforesaid Circuit Court of Appeals, and that such other and further order may be made as may be proper.

Dated: June 20, 1939.

CHASE, BARNES & CHASE,
LUCIUS K. CHASE,
THOMAS R. SUTTNER,

Attorneys for Alfred E. Rogers,
L. L. Rogers, Lucy H. Rogers,
Rogers Corporation, Ltd.,
Carlton Properties, Inc., Ltd.,
Horace V. Goodrich, Henry C.
Chase, Jack B. Rogers, Carl-
ton M. Rogers, Howard N.
Rogers and George A. Rogers.
Inc., Ltd., Proponents of
changes and modifications in
plan of reorganization of
debtor corporations above
named.

[Endorsed]: Filed June 22, 1939. Paul P. O'Brien, Clerk.

[Clerk's Note: Assignment of errors filed in Circuit Court of Appeals on June 22, 1939, in connection with preceding petition for appeal, is identical to assignments of error filed in District Court, heretofore set forth herein at pages 35 to 38 and is not reprinted here to avoid duplication and expense.]

United States Circuit Court of Appeals for the
Ninth Circuit.

Excerpt from proceedings of Monday, June 26,
1939.

[Title of Cause.]

ORDER SUBMITTING PETITION FOR
ALLOWANCE OF APPEAL

Good cause therefor appearing, Ordered petition of Alfred E. Rogers, et al., filed June 22, 1939, for allowance of appeal herein submitted to the Court for consideration and decision.

In the United States Circuit Court of Appeals, for
the Ninth Circuit.

No. 9214

In Proceedings for the Reorganization of a
Corporation.

In the Matter of

CONSOLIDATED ROCK PRODUCTS CO.,
a Delaware corporation,

Debtor,

UNION ROCK COMPANY,
a corporation,

Subsidiary,

and

CONSUMERS ROCK & GRAVEL COMPANY,
INC., a corporation,

Subsidiary.

ALFRED E. ROGERS, L. L. ROGERS, LUCY
H. ROGERS, HORACE V. GOODRICH,
HENRY C. CHASE, JACK B. ROGERS,
CARLTON M. ROGERS, HOWARD M.
ROGERS, ROGERS CORPORATION, LTD.,
and CARLTON PROPERTIES, INC., LTD.,
owners and holders of shares of common stock
of CONSOLIDATED ROCK PRODUCTS
CO., and GEORGE A. ROGERS, INC. LTD.,

owner and holder of bonds of UNION ROCK
COMPANY,

Appellants,

vs.

CONSOLIDATED ROCK PRODUCTS CO.,
F. B. BADGLEY, R. E. FRITH, T. FENTON
KNIGHT, and WALTER S. TAYLOR, com-
posing UNION ROCK COMPANY BOND-
HOLDERS' PROTECTIVE COMMITTEE;
WM. D. COURTWRIGHT, FRED L.
DREHER, F. J. GAY, ALFRED GINOUX
and GUY WITTER, composing CONSUM-
ERS ROCK AND GRAVEL COMPANY,
INC. BONDHOLDERS' PROTECTIVE
COMMITTEE; EDWARD E. HATCH and
LOUIS VAN GELDER, composing PRE-
ferred STOCKHOLDERS' COMMITTEE
OF CONSOLIDATED ROCK PRODUCTS
CO. and E. BLOIS DuBOIS,

Appellees.

STATEMENT OF POINTS RELIED UPON ON
APPEAL, AND DESIGNATION OF REC-
ORD FOR PRINTING.

Appellants state that they intend to rely upon the points mentioned in the "statement of points relied on" at pages 24 and 25 of the Agreed Statement of Case and Record upon Appeal herein and also upon the "assignment of errors" in said record contained at pages 21, 22 and 23 thereof, and appel-

lants designate the following as the parts of the record which they think necessary for the consideration of the points upon which they intend to rely in this appeal, and for printing:

All those parts of the record contained in the Agreed Statement of Case and Record upon Appeal signed by the attorneys for appellants and appellees and approved by the Honorable Harry A. Hollzer, United States District Judge, on July 17, 1939, are to be printed, and in addition any stipulations or orders relating to an extension of time to docket the appeal that may be hereafter made.

Dated: July 18, 1939.

CHASE, BARNES & CHASE,
LUCIUS K. CHASE, and
THOMAS R. SUTTNER,
By THOMAS R. SUTTNER,
Attorneys for Alfred E. Rogers,
L. L. Rogers, Lucy H. Rog-
ers, Horace V. Goodrich,
Henry C. Chase, Jack B.
Rogers, Carlton M. Rogers,
Howard M. Rogers, Rogers
Corporation, Ltd., Carlton
Properties, Inc. Ltd. and
George A. Rogers, Inc. Ltd.

Service of the within admitted this 18th day of
July, 1939.

MOTT & GRANT,
Attorneys for E. B. DuBois.

Service of the within statement admitted this 18th day of July, 1939.

STANLEY ARNDT,

Attorney for Pfd. Stockholders
Com.

Received copy of the within document Jul. 18, 1939.

GIBSON, DUNN & CRUTCHER

Per A.

Received copy of the within Statement this 18th day of July, 1939.

LATHAM & WATKINS

By: D. C. WORLEY.

Received copy of the within document July 18, 1939.

O'MELVENY, TULLER &

By L. A. D.

MYERS